## United States Court of Appeals for the Second Circuit



**APPENDIX** 

# 76-3077

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-3077

UNITED STATES OF AMERICA,

PETITIONER

-vs-

HONORABLE JON O. NEWMAN UNITED STATES DISTRICT JUDGE

NOMINAL RESPONDENT

(MARGARET LEE ROBINSON AND PATRICIA SAVARESE, DEFENDANTS BELOW AND ACTUAL RESPONDENTS)

RESPONDENTS' APPENDIX

ANDREW B. BOWMAN
FEDERAL PUBLIC DEFENDER
770 Chapel Street
New Haven, Connecticut 06510
(FTS) 8-643-8148
ATTORNEY FOR MARGARET LEE ROBINSON

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ATTORNEY FOR PATRICIA SAVARESE

On the Brief:

PETER GOLDBERGER
Asst. Federal Public
Defender



PAGINATION AS IN ORIGINAL COPY

#### CONTENTS OF RESPONDENTS' APPENDIX

Docket Entries in U.S. v. Robinson (Crim. No. N-76-63 [D. Conn.])	Resp.	App. 1
Docket Entries in U.S. v. Savarese (Crim. No. N-76-63 [D. Conn.])	Resp.	App. 5
Judge Newman's October 26, 1976,  Memorandum on the Government's Motion for Reconsideration	Resp.	App. 7
Second Affidavit of Mario G. Conte, Jr. (Dated Dec. 6, 1976)	Resp.	App. 10
Attachments to Second Conte Affidavit (Selected D. Conn. Jury Selection Records)	Resp.	App. 14
Transcript of Proceedings Held Nov. 29, 1976	Resp.	AppTr. 1

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OTHER MISDEMEAND	NY Fet '2' District Office	Disp./Sentence / (LAST, FIRST, MIDE	DLE)	JUVENILE *	US MAG. >
	U.S. TITLE/SECTION	orioezaleá (i	ses Charged	ORIGINAL COUNTS	BAIL . III
	16:6.36	conspiracy		~:1	Denied Set L
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		•		SUPERSEDING COUNTS	Bail Not Made L. Status Changed L. (See Dockel)
	II. KEY DATES & INT	INDICTMENT X	ARRAIGNMENT	D TRIAL	
	U.S. Custody Began	High Rick Date   \Information	) }	JULIO J FOLGAL	X Disposition of Charges
()	Summons Served	Indict. Waived	1	G Plea.	
	First Appearance	In Charging Distinct	I mat Plea .	LIG LINON L	L] Dismister  [   On Government
			MAGISTRATE	T HATTAL /NO.	OUTCOME:
	Search Issued	DATE INITIAL/NO.	INITIAL APPEARANCE DATE		HELD FOR GJ OR OTH
	Return		L. JINATION Scheduled Date		L. JCEEDING IN THIS DIS
	Summons		HEARING Held	Tape Number	1_ JCFEDING IN DISTRIC
	COMPLAINT >		INTERVENING INDICTMENT		1
	OFFENSE (In Complaint)				
	U.S. Attorney or Asst.		ATTORNEYS	Delense [ ]CJA.[ ]Ret.[ W.m	ed. Self. UNon- / Other. 23

	) NOTE: 5) GAVARGER PROCEEDINGS
6/21/76	Indicipent returned and filled at New Mayen. Summons have issue for May 3, 1976 at 10:00 V.M. in New Mayen.
4/22/76	Surmous distanted and handed to U.S. Harshal for service.
3/15	Financial A liberto, liter by delt and and request from Federal Public Pelevier to be appointed with order thereo
5/3	Frankling same. In wane, 1. 5/4/76.  ***********************************
5/5	Parative to the the factor of their S ground.
3/5	Untile a configer. That is joya.
5/13	Court Reporter's Notes of Proceedings (Plea) held on 5/3/76, filed, Russell, R.
6/21/76	On JON's Jury Assignment List: Deft. Robinson request continuance for further investigation. Jury slected. Trial set for Aug. 30, 1976. Newman, J. m-6/21/76.

DATE	. IV. PROCEEDINGS (continued) PAGE TWO .	٧ ا	
1976 .	-iDOCUMENT NO )	1	614
6/21/76	JURY TRIAL COMMENCES: 12:25 P. M. Oath on voir		
	dire administrered. 40 jurors respond to roll call.	- 1	
	8 jurors absent at time of roll call. Court describ	es	
	case to jury. Three jurors excused for cause.		
	Govt. allowed seven challenges to jury and alternate	s.	
	Deft. allowed thirteen challenges to jury and		
	alternates. The case will have a jury of twelve		
	and five alternates. 12:57 P.M. Jury panel excused		
	until June 30, 1976. Clerk's Office will notify		
	those chosen in this case. Oath to be administered	.	
	on date trial begins. Deft. Robinson moves to		
	expunge the challenges of the govt. Deft. Savarese		
	joins the motion. Court will defer ruling at this time. Clerk will keep the present record as it		
	stands now until ruling is rendered. Newman, J.		
	m-6/21/76.		
	m-0/21//0.		
6/29	Brief in Support of Motion to Strike the Govt's		
0/23	Jury Challenges, filed by deft. Savarese		
7/21	Govt's Response in Opposition to Deft's Motion to		
1/21	Strike Govt. Jury Challenge, filed.		
7/22	Govt's Motion to Compel Handwriting Exemplars and	٠.	
	Memorandum In Support of Hit's Motion to Compet		
	Handwriting Exemplars re: dett. Savarese, Filen.		
.7/23	Motion for Permission to Inspect Juror Qualification		
	Questionnaires, Courtroom Minutes and Feremptory		
	Challenge Sheets from June 1974, to Date of tris		•
	Motion On File with the Clerk, U. S. District Court,		
	Hartford, Connecticut, filed by deft. Robinson.		
8/2	Court Reporter's Sound Recording of Proceedings		
	(Plea) held on May 3, 1976, filed. Russell, R.		

...

8/3/76	Motion for Permission to Inspect Juror Qualification Questionnairs, Courtroom Minutes and Peremptory Challenge Sheets from June, 1974 to Date of the
	Motion on File with the Clerk, U. S. D. C., Htfd,
8/17	Conn. endorsed: Motion granted. Newman, J. m-8/5/76. copies mailed to counsel. Notice of Defense of Insanity, filed by deft.
8/19	Motion for Psychiatric Examination, filed by govt.
8/25	Hearing held on Govt. Motion for Psychiatric Exam.  Motion granted. Atty. Bowman moves to be present during Dr. Miller's examination. Court suggests that
	counsel should discuss the request with Dr. Miller
2.55	to see if Atty Bowman can be present or in an area
	DATE RECEIPT FROMBER CO NOMBER
447	The dispersion of the same of

Resp. App. 2

Michael Hartmere, filed by govt.

UNITED STATES DISTRICT COURT

Newman, J. m-10/27/76. copies mailed to counsel of record.		
11/2 Government's Compliance with Court's Ruling of October 26, 1976, filed by govt.		
Ruling on Govt's Motion to Reconsider, filed and entered. Motion is denied. Jury selection will resume on Nov. 29, 1976, Newman, J. m-11/4/76. copies mailed to counsel.		
Court Reporter's Transcript of Proceedings (jury selection) held on June 21, 1976, filed. Gale, R.		
JURY TRIAL AND JURY SELECTION CONTINUES: Motion for continuance, filed by govt. Govt. advises  Court that they have mailed a petition for Writ of Mandamus and Motion for Stay to the U.S.C.A. and		
that a copy was to be halle delivered this	ver-	Lie

#### UNITED STATES DISTRICT COURT CRIMINAL DOCKET

DATE 1976	PROCEEDINGS (continued)	1:1	EXCLUDAME!		LAY
11/29	tothe U.S.C.A. Motion for Continuance denied for reasons stated in open Court. Govt. request a voir dire of the remaining jurous re:publicity. 11:35 A.M. Court advises counsel that it has contacted the Court of Appeals and they have not received the petition. Court and counsel discuss the amount of alternate jurors to be selected. 11:50 17jurors present. 12 jurors and 2 alternates impanelled and sworn. Clerk's office to notify jury when the tesitmony is to commence. 12:02 P.M. Court adjourned in this matter. Newman, J. m-11/29/76.		3 2		
11/29	Motion for Continuance endorsed: Motion denied for reasons stated in open Court. Newman, J. m-11/29/76 copies mailed to counsel.	-	112	8	
11/30	CJA Form 21 authorizing transcript of Proceedings (Jury Selection) held on Nov. 29, 1976, filed. Newman, J.				

12/1	CJA Form 21 authorizing payment in the amount of \$180.00 to Dr. Marc A. Rubenstein, filed. Newman, J. Court Reporter's Notes of Proceedings (Jury selection)									
11/27	held on Nov. 29, 1976, filed. Gale, R.									
12/3	Motion to Postpone Consideration of Motion to Suppress Identification Testimony, Motion to Suppress Identification Testimony and Motion for Production of Photigraphic Spread, filed by deft. SAVERESE.									
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1		may issue for Hay 3, 1976 at leader A.H. in New Haven.
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	5/13/76	. Court Reporter's Notes of Proceedings (Plea) held
	3/13/10	on 5/3/76, filed. Russell, R.
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Resp. App. 5

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DATE	IV. PROCEEDINGS (continued) . PAGL TWO	1	1000	:
1976	- Destangment of Hearing	3	5/18/	76
5/18	Motion for Production; Request for Postponement of Hearing on Motion to Suppress Confession; Motion to Transcribe Grand Jury Minutes; Motion to Suppress Confession, filed by deft.			
	July Minutes, andersed	3	6/18	170
6/19	Motion to Transcribe Grand Jury Minutes endorsed			
6/18				
	for Production endorsed: Fal #1 grantes Identifying granted, Par #3 granted as to witnesses Identifying		17 (84)	
•	granted, Par #3 granted as to wither for Postponement defendant; offerwise denied. Request for Postponement			
	defendant; offerwise denied. Request 102 102 102 102 102 102 102 102 102 102	' E	1	
	of hearing on Motion to Suppless contessually Motion granted. Newman, J. m-6/18/76. copies maile	. di		
	Motion granted. Newhall, 3			
	to Attys Hartmere and Williams.		21	
	On JON's Jury Assignment List: Jury selected.		1	
6/21/76			27	
	Trial set for Aug. 30, 1970.  see Robinson docket sheet for trial minutes.  see Robinson docket sheet for trial minutes.  see Robinson docket sheet for trial minutes.			
	see Robinson docket sheet for trial minutes.  Motion to Compel Handwriting Exemplars & Memorandum, filed by Court Reporter's Sound Recording of Proceedings  Court Reporter's Sound Filed Russell, R.	y Go	VC.	
7/22	Court Reporter's Sound Recording of Proceedings			
8/2/76	1 (-100) held on May J. 1970; Illied.			
· /	to the world on plaintiff's motion to			
11/5	compel handwriting exemplars as follows: Motion to November 12, 1975. Newman, J			
	Granted. Compliance by November 22, of record.	4		
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11/20	Jury Trial Continues: See Robinson docket sheet	1-		
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U. S. DISTRICT COURT NEW HAVEN, CONN.

#### UNITED STATES DISTRICT COURT

#### DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

V.

CRIMINAL NO. N-76-63

MARGARET LEE ROBINSON and PATRICIA SAVARESE

sideration of this Court's ruling of October 15, 1976, sustaining defendants' objection to the prosecutor's use of four peremptory challenges against Black veniremen and directing a prospective remedy. The Government alleges three grounds, which will be considered in order.

1. The Government says it believes this Court's decision will have "a very serious impact . . . on effective law enforcement in the District of Connecticut." How law enforcement will be rendered less effective if the Government reduces the frequency of its challenges against Black venirement to a rate that is not excessive is unclear. What should be clear is that the Court's ruling does not prevent the Government from using a peremptory challenge against anyone in any particular case; only continuation of an excessive pattern of challenging Black veniremen will incur the risk of sanctions. I find it hard to believe that the Government is seriously claiming that any increase in the number of Blacks serving on federal court juries will reduce the effectiveness of law enforcement in this District.

2. The Government further alleges that the Court "failed to consider" the material submitted by the Government in opposition to defendants' motion. If a decision goes against a party submitting a brief, at least two inferences are possible: the brief was not read, or it was read and found unpersuasive. Perhaps the Government believes that its briefs are uniformly so persuasive that any adverse decision necessarily means a Court has failed to consider them. I hesitate to disturb such a comforting illusion. However, the Government may be assured that its papers were read. Indeed, the Court's decision specifically refers to their contents.

3. Finally, the Government contends that it was denied sufficient time to respond to defendants' papers. The fact is that the Government had from September 1, when it received the last of defendants' papers, until October 5, when it finally filed its second set of opposition papers. Furthermore, until now there had never been any indication that additional time beyond October 5 was needed. Even now the Government makes no claim as to what additional time it needs nor what specific task it needs time to perform. Instead, the Government makes the serious allegation that if the present motion were granted, "the Government will conclusively show that the figures and statistics submitted by the defendants . . . are misleading. . . . " This bald assertion is certainly no basis for the granting of the motion, without some indication of what the new information would be. Hevertheless, since the Court's scheduled jury business

and to afford the Government one final opportunity to make yet a third presentation of papers in opposition to the defendants' motion, the Court will defer ruling on the Government's motion for reconsideration for one week to permit receipt of whatever further submission the Government cares to make, which shall be filed by November 2, 1976.

Dated at New Haven, Connecticut, this 26th day of October, 1976.

Jon O. Newman

Jon O. Newman

United States District Judge

#### IN THE

### UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

V.

JON O. NEWMAN, UNITED STATES DISTRICT JUDGE

#### AFFIDAVIT OF MARIO G. CONTE, JR.

The undersigned, being duly sworn, deposes and says:

- 1. I am a law student enrolled at the University of Connecticut School of Law and am interning in the Office of the Federal Public Defender.
- 2. At the request of the Federal Public Defender, I examined juror qualification forms, challenge sheets, and court-room minutes to determine how many black veniremen appeared for jury selection and how many were challenged peremptorily by the government and by defense counsel.

- 3. The research was conducted for the Hartford, New Haven, and Waterbury seats of court for the period of June 1974 through June 1976 and was submitted in affidavit form in August of 1976 to be used in connection with United States v. Robinson jury selection motion filed by the defendant.
- 4. The material presented infra is a response to the presumed errors in that affidavit alleged by the government in their mandamus brief at pages 10 and 21 and Appendix B to that brief.

#### Government's Appendix B

In the first two alleged errors, the government is referring to Nancy Barker, a black individual, as being present in the arrays of February 24, 1976, for jury selection in the trials of United States v. Mitchell and United States v. Carlo. The government maintains that it was an error not to include this black individual in those arrays. By reviewing the photocopies of those arrays and the clerk's minutes, attachments 1-6, it is clear that there were supposed to be 50 people in each array. However, by additionally checking the upper right-hand corner of the first page of each array sheet, attachments 1 and 4, one can see the clerk's assessment of how many individuals were in fact present that day. In the clerk's handwriting, it states, "47 respond to roll call."

missing people were Nancy Barker (No. 4), David Burgess (No. 8), and June Price (No. 41). Mrs. Barker is the only black among the three and is the black individual the government alleges was actually present that day. It is clear that Mrs. Barker was not present, and therefore, the first two errors attributed by the government to the defendant's statistics are mon-existent.

b. The third error allegedly occurred in <u>United</u>

States v. Keish. The government states that there were three

blacks in the general array and that defendant's statistics

reflect only one. Turning one's attention to page 10 of the

original affidavit, attachment 7, it is clear that in the Keish jury selection, the affidavit unmistakenly shows two blacks in the general array. The government persists in maintaining that there were three blacks in the array: Nancy Barker, Calvin Brown, and Edna Taylor. However, Calvin Brown was not present because a line was clearly drawn through his name as it was for all absentees. Attachment 9. This fact is additionally supported in this affidavit by a telephone conversation between the affiant and the New Haven Clerk's Office on December 3, 1976, in which that office confirmed that Calvin Brown was not present for the roll call on that day for jury selection. He was subsequently permanently excused on February 3, 1976. The third error attributed by the government is non-existent.

c. The fourth error alleged by the government was in the jury selection for <u>United States v. Chamberlain</u>. The government was unable to confirm their peremptory challenge against Donald Joyner, a black individual. By checking the photocopy of the general array and the clerk's record of peremptory strikes by the government, attachments 10 and 11, it is clear that Donald Joyner was present and peremptorily challenged by the government. This eliminates the fourth alleged error.

d. In its finding of a fifth error, the government states that in the second trial of <u>United States v. Barry</u>, the original affidavit indicated one black individual being eliminated by defense challenge. Their research was unable to confirm that fact. By reviewing the photocopies of the general array and the clerk's record of defense challenges, attachments 12 and 14, it is clear that Ruby Adams was present that day and was challenged by defense counsel. This disposes of the last error.

Respectfully submitted,

MARIO G. CONTE, JR.

Law Intern, Office of the Federal Public Defender

450 Main Street

Hartford, Connecticut 06103 (203-244-3357)

Subscribed and sworn to before me this 6th day of

December, 1976.

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#### United States v. Mitchell

## UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

47 Respond to rollcall

PET	IT JURY	NEW HAVEN	FFB. 24, 1976
<b>\1.</b>	ANSALDO, N. Alfred		West Haven
√2.	BACON, Arthur L.		North Haven ,
√3.	BANNON, Mrs. Anna M.	,,	West Haven
4.	BARKER, Mrs. Nancy tobe.	excused permanently.	New Haven
₹5.	BERGERON, Henry J., Jr.		West Haven
<b>\</b> 6.	BEST, Miss Linda		Wallingford
√7.	BLANCHETTF, Camille		Waterbury
8.	BURGESS, David P. Lons	to Hartford	Meriden
	BURKMAN, Mrs. Donna F.		Wolcott
<b>\10.</b>	BUTTS, Mrs. Gladys		Middletown
<b>\11.</b>	CHAPIN, Mrs. Helen E.		West Haven
<b>\</b> 12.	CHOSZCZYK, Saturmin		Ansonia
<b>\</b> 13.	CHURCH, Richard A.		Wallingford

№14. D'AURIO, Alphonse

15. DE LUCIA, Andrew J.

∼16. DOMS, Mrs. Roberta

17. DONNELLY, Thomas P.

\$

18. DRFSSEL, Erwin F.

19. ERICKSON, John

雪

V20. FOX, George S.

21. KELSEY, Roger A.

22. KEZELEVICH, Ronald Joseph

√23. KING, Mrs. Helen I.

V24. KROHN, Albert C. J.

25. LADD, Mrs. Mary F.



∼26. LINK, Miss Susan G.

27. LOUGHLIN, James



V28. MAGSUMBOL, Ramon S.

West Haven

East Haven

Hamden

Waterbury

Cheshire

Colchester

Madison

Branford

Naugatuck

Meriden

Waterford

New Haven

Orange

Hamden

Montville

30. MASCOLA, Vincent

31. MCGUIRE, Mrs. Natalie K.

32. MCKINSTRY, George

33. MICKUS, Mrs. Nellie B.

34. MIHALAKOS, Mrs. Neka

35. NERKOWSKI, John

36. NOSTER, Thaddeus

37. O'CONNELL, Mrs. Mary S.

38. ODDO, Mrs. Virginia

39. PICKUP, Mrs. Carolyn J.

40. PITINO, Rosario

41. PRICE, Mrs. June C.f absent

42. REARDON, Mrs. Elinor J.

43. RFGAINI, Mrs. Marion

44. ROSWELL, William Paul

45. RUSSO, Gaetano

Ansonia

New Haven

Hamden

Wallingford

North Branford

Cheshire New Haven

Wallingford

Middletown

Hamden

East Haven

West Haven

Waterbury

South Britain

Seymour

Southbury

North Haven

SLATER, Mrs. Ethyl R.

WICKSON, Ronald R 48.

47.

49. WISHNAFSKI, Paul A.

50. ZABILOWSKI, Thomas E. West Haven

Hamden

Chester

Wallingford

New Haven

Carlo/Mitchell Jury additional last

FEB 25 1976

New Haven Neuman, J. W Roug, D.C. Gale, R. 2/24/76

United States Of America vs. GARY CARL MITCHELL Criminal No. N-75-175

William F. Dow, III Asst. U.S. Atty.

Gregory B. Craig Les Michaelson, Yale Law Student

11:57 A.M. Jury Trial begins

Oath on Voir Dire administered.
47 jurors respond to roll call (see attached list)
(Mrs. Nancy Barker, excused permanently, Mr. Burgess, transferred to Hartford seat of Court, and Mrs. Price, is absent)

The following excused for cause .#13 Richard Church #15 Andrew J. DeLucia

Govt. allowed 6 challenges
Deft. allowed 11 challenges

Basic panel of 31 names drawn from the jury wheel

Govt challenges: #12 Saturmin Choszcyk #42 Elinor J. Reardon #43 Marion Regaini # 1 Alfred N. Ansoaldo #29 Paul S. Manzone #10 Mrs. Gladys Butts Deft. Challenges
#38 Virgina Oddo
#22 Ronald Kezelvich
# 2 Arthur Bacon
#21 Roger Kelsey
# 3 Anna Bannon
#33 Hellie B. Mickus
#47 Ethyl Slater
#23 Helen I. King
#36 Thadeus Noster
#24 Albert C. J. Krohn
#38 Virginia Oddo

The following twelver jurors and 2 alternates, impanelled and sworn:

- 1) Paul Wishnafski
- 2) Natalie McGuire
- 3) Vincent Mascola
- 4) Mary F. Ladd
- 5) Thomas P. Donnelly
- 6) Ronald R. Wickson
- 7) George McKinstry

8) Camille Blanchette

- 9) Linda Best
- 10) John Erickson
- 11) James Loughlin
- 12) Carolyn J. Pickup Alt. 1) Helen E. Chapin
- Alt. 2) Thomas Zabilowski

Evidence in this case to gr begin the week of March 8, 1976.

Jurors remain for selection in the next criminal matter N-75-95

12:50 Court adjourned in this matter.

VZ8. MAGSUMBUL, Ramon S.

Montville

### United States v. Carlo

## UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

PET	IT JURY	NEW HAVEN	FFB. 24, 1976
1	ANSALDO, N. Alfred		West Haven
2.	BACON, Arthur L.		North Haven ,
3.	BANNON, Mrs. Anna M.		West Haven
4.	BARKER, Mrs. Nancy	es perm	New Haven
5.	BERGERON, Henry J., .	Jr.	West Haven
6.	BEST, Miss Linda		Wallingford
7.	BLANCHETTF, Camille	11+11	Waterbury
8.	BURGESS, David B. #	rane to Hareford	Meriden
9.	BURKMAN, Mrs. Donna I		Wolcott
10.	BUTTS, Mrs. Gladys		Middletown
11.	CHAPIN, Mrs. Helen E.		West Haven
12.	CHOSZCZYK, Saturmin		Ansonia
13.	CHURCH, Richard A.		Wallingford
14.	D'AURIO, Alphonse		West Haven
15.	DE LUCIA, Andrew J.		East Haven

16. DOMS, Mrs. Roberts	Ha.aden
17. DONNELLY, Thomas P.	Waterbury
18. DRFSSEL, Erwin F.	Cheshire
19. ERICKSON, John	Colchester
20. FOX, George S.	Madison
21. KELSEY, Roger A.	Branford
22. KEZELEVICH, Ronald Joseph	Naugatuck
23. KING, Mrs. Helen I.	Meriden
24. KROHN, Albert C. J.	Waterford
25. LADD, Mrs. Mary F.	New Haven
26. LINK, Miss Susan G.	Orange
27. LOUGHLIN, James	Handen
28. MAGSUMBOL, Ramon S.	Montville

29. MANZONE, Paul S. Ansonia 30. MASCOLA, Vincent New Haven 31. MCGUIRE, Mrs. Natalie K. Hamden MCKINSTRY, George 32. Wallingford MICKUS, Mrs. Nellie B. 33. North Branford MIHALAKOS, Mrs. Neka 34. Cheshire 35. NERKOWSKI, John New Haven NOSTER, Thaddeus 36. Wallingford O'CONNELL, Mrs. Mary S. 37. Middletown 38. ODDO, Mrs. Virginia Hamden 39. PICKUP, Mrs. Carolyn J. East Haven 40. PITINO, Rosario Waterbury 41. PRICE, Mrs. June C.f alsent West Haven 42. REARDON, Mrs. Elinor J. South Britain 43. RFGAINI, Mrs. Marion Seymour

44. ROSWELL, William Paul 45. RUSSO, Gaetano

SACKETT, Mrs. Ann G. 46.

North Haven

Southbury

West Haven

47. SLATER, Mrs. Ethyl R.

48. WICKSON, Ronald R

49. WISHNAFSKI, Paul A.

50. ZABILOWSKI, Thomas E.

Hamden

Chester

Wallingford

New Haven

Carlo/Mitchell lung additional last

New Haven Newman, J. Rowe, D. C. Gale, R.

2/24/76

FEB 25 1970

UNITED STATES VS. WILLIAM CARLO

CRIMINAL NO. N-75-95

Peter A. Clark Asst. U.S. Attorney

Gregory B. Craig Les Michaelson Yale Law Student

12:53 P.M. Jury trial begins

Oath on Voir Dire administered

47 jurors respond to roll call (see attached list)
(Mrs. Barker, excused permanently, Mr. Burgess, transferred to Hartford seat of Court, Mrs. Price is absent)

Excused for cause #13 Richard Church

Govt. allowed 7 challenges Deft. allowed 12 challenges

Basic ar panel of 33 names selected from the jury wheel

#26 Susan Link #12 Saturmin Chosczyk #14 Alphonse D'Aurio #29 Patl Manzone #40 Rosario Pition # 1 Alfred Ansaldo waived Deft. challenges
# 3 Anna Bannon
#31 Natalie McGwire
#11 Helen Chapin
#46 Ann Sack
#47 Ethyl Slacer
#10 Gladys Butts
#37 Mary S. O'Connell
# 33 Nellie Mickus
#38 Virginia Oddo
#39 Carolyn J. Pickup
#34 Neka Mihalakos
waive

The following 12 jurors and 2 alternates impanelled and sworn:

- 1) Thomas P. Donnelly
- 2) Roberta Doms
- 3) Arthur L. Bacon
- 4) George S. Fox
- 5) Henry Bergeron
- 6) Albert C.J. Krohn
- 7) Elinor Reardon

- 8) John Erickson
- 9) Linda Pest
- 10) Ronald R. Wickson
- 11) Ramon S. Magsumbuol
- 12) Roger A. Kolsey
- 11t. 1 Ronald Kezelvich
- Alt. 2 Andrew DeLucia

Evidence in this case to begin the week of March 22, 1975.

1:20 P.M. Jury excused subject to call
"" Court adjourned

- c. In the final analysis for black defendants on trial:
- (1) Of the eight total trials against black defendants, three of these has No black individuals in the general array.
- (2) Of the five trials in which black jurors were possible, eligible individuals were eliminated in two of those trials solely because of <u>Government</u> challenge.
- (3) There was only one defense challenge to a possible black juror, and this was not the sole reason for a possible black juror being eliminated from that jury.

## 15. Schedule of White Defendants and Trials.

There were 14 trials involving white defendants of which 10 were trials of an individual defendant and 4 were multiple defendant trials.

Of these 14 trials, there were 3 trials that had <u>No</u> black people in the general array. Additionally, possible black jurors appeared 34 times in general arrays totalling 846 individuals. This is depicted separately in addition to Government and defense challenges as follows:

- a. 3 Trials (4 defendants) -- No possible black jurors in the general array.
- b. Remaining 11 Trials (21 defendants).

United States v. Mitchell. Had 1 possible black juror in the general array.

-- Eliminated by Government challenge

United States v. Carlo. Had 1 possible black juror in the general array.

-- Eliminated by defense challenge

United States v. Canestri. Had 2 possible black jurors in the general array.

- -- 1 absent.
- -- 1 not chosen for final panel.

United States v. Keish. Had 2 possible black jurors in the general array.

- -- 1 excused for cause.
- -- 1 eliminated by defense challenge.

Resp. App. 20

Attachment 7

MICROFILM NEW MOUNT New man, J. United States W. Keish January 19,1916 BAN 2 0 1976 NEW HAVEY N-74-99 Crim-USA us. Honk R. Keish William F. Dow Gregory, Ciely New Houng Min. The chapel St Wew Hores Conn Jury Trial Commences 4:40 P.M. 46 junors present. Junis TXILSED, for cause: 1. Walter Hantin 2. Nancy Darker 3. Posiphine Pankkiewicz 4. Edward Kosicki

Basic panel of 33 hames drawn: 1. Marjone Andriola 2 Karin Mavin 3. William Langevin 4. Rosemanie Leary 5. Waired waived 7. Alfred Zieminski Rolph Vuolo 8. Erwin Dressel 2. Chester Ceyrobek 3. Walter Weeks 9. Helen King 4. Dand Pearson, 10. Charles Octom 5. Margaret Mitola. 11 Thomas 22/ 6. Ann Sackett 12 Ronald D

1.5 0

## United States v. Keish UNITED STATES DISTRICT COURT

#### DISTRICT OF CONNECTICUT

1		PETIT JURY NEW HAVEN JA	AN. 19, 1976
	1.	ANDRIOLA, Mrs. Marjorie B.	Orange
	2.	ANSALDO, N. Alfred	West Haven
	3.	BACON, Arthur L.	North Haven
	4.	BARKER, Mrs. Nancy	New Haven
	5	BROWN, Calvin Ex. Temp	Ansonia
Quied	6.	CASE, Oliver	Naugatuck
	7.	CHOSZCZYK, Saturmin	Ansonia
	8.	CROMPTON, E. Charles	Middlefield
	9.	D'AURIO, Alphonse	West Haven
	10.	DOHERTY, James G.	Waterbury
	11.	DOLL, Mrs. Roberta	Hamden
	12.	DRESSEL, Erwin F.	Cheshire
	13.	FIEDLER, Andrew	Groton
	14.	HAMLIN, Walter	Shelton
	15.	KING, Mrs. Helen I.	Meriden

	1.0
10. KOSICKI, Edward C.	Middletown
17. LANGEVIN, William E., Jr.	Meriden
18. LEARY, Mrs. Rosemarie	Portland
19. LEVY, Jacob	New Haven
20. LIPPS, Mrs. Arlene	Milford
21. MAGSUMBOL, Ramon S.	Montville
22. MANZONE, Paul S.	Ansonia

23. MITOLA, Mrs. Margaret Naugatuck

24. MURRAY, Mrs. Flizabeth S. Hamden

## Plasse report to Doom 25%.

# United States v. Chamberlain UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

PETIT JURY

HARTFORD

OCTOBER 1, 1974

. A. J. 1844	
1.	BRODEUR, William C.
2.	BUKOWSKI, Mrs. Kathryn
3.	CAPONE, Ernest C.
4.	V CARTER, Mrs. Roxie See Club
5.	CAVANAUGH, Raymond
6.	CROCKETT, Mrs. Ruth See Clerk
7.	CRUSSANA, Mrs. Doris D.
8.	DAWKINS, Otto P.
ġ.	DeFRANCISCO, Daniel L. See Clark
10.	DeLAURENTIS, Mrs. Claudette M
11.	DELOY, Joseph H.
12.	DeNUZZE, Mrs. S. Irene

	13.	DiCIOCCIO, David
	14.	FOX, Mrs. Rosemary R.
	15.	FRANCULLI, Francis E.
	16.	GIDDIX, Leonard R. Sr.
	17.	GUSTAFSON, Carl R
	18.	HARDY, Raymond M. Jr.
_	-19.	HEDUS, William C. Jr. Voc
	20.	HIGGINS, Donald
	21.	HINCKLEY, David N.
	22.	HUNT, Mrs. Lucille M.
	23.	HURLBURT, Robert J.
	24.	JOHNSTON, Wilfred
	25.	TOWNER   Donald I

Attachment 10

Defindent Chillenges & Coppe Jung Co Fox H Stelowing 2 Gusteton 3 Delong 40 David Kyrland 2 Vietrygla 5 & Gradin 6 mis & Krumin Houng Banel 7 Sown 8 hus Rate 9 Secoccio 10 hus L'Evrolechi 11 hus V Wazer 12 Wm Broden 2. D. Welding 3 hus & Deflowe 4 R Shulfred 10 5 W Huston 11 6 mil De Limentes 12 all # 1 has Lucille Hunt Cose & Gr on Och 8, 1974 Jany 894 SA o Champalain Wifele

Resp. App. 24

Attachment 11...

MECESSANCY NDICATE MILEGE EACD STATES DISTRICT COURT DISTRICT OF CONNECTICUT United States v. Barry PETIT JURY HARTFORD AUGUST 5, 1975 ADAMS, Miss Ruby J. ALDRICH, Rodney AMES, Wendell S. / BRZEZICKI, Mrs. Elizabeth COUCH, Frederick S. 64 DESSERT, Thomas R (/ DiLORENZO, Vincent . DOLLOFF, Mrs. Winifred DUDACK, Mrs. Jeanette K. 9. EASTWOOD, John W. 10. 16 FOX, Miss Joanne E. 11.

none GULLEY, Mrs. Patricia 12. 32 LIGNES, Thaddeus X. 13. 31 JONES, Miss Frances M. 14. JONES, Kirk P. 15. 22 KANCEWICZ, Mrs. Helen M. 16. 10 KUBIK, Joseph 17. LARSON, James W. Jr. 18. VASKA, Paul M. 19. LONGSTREET, Frederick Jr. 20. Attachment, 12

Hon Mys Blumen SQUS 255 Harton Revend Sovolus DC Crim # 3915 USA is Richard Barry R Rittenfand app on Houtmen Juny trial commences Due Dustins Aled for Voice Depudents Reguestes for Voice Defendant Reguest to Change

notion to Suppress Hearing Moiso Survey Com. 20 When allows of 50 than allows of 50 than answer Kell Voir Dire Oath administer Just interrogated as on case problementions to six Excused the cause De A. Wisausky Attachment 13 Resp. App. 26

Alexan P. Ryfa My Elynon Brzericki John Castwood Morgaty Touston France Jonel of 28 Challenges K. aldrich I Vietalesa 3. Frederich Libragher The Hi Kanteling 5 Am & Wendrychowses Didrenzo

Mrs Margaret Schank

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

vs.

Criminal No: N-76-63

MARGARET LEE ROBINSON and PATRICIA SAVARESE

New Haven, Connecticut November 29, 1976

B e f o r e: HONORABLE JON O. NEWMAN, U.S.D.J.

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750 MAIN STREET HARTFORD, CONNECTICUT

141 CHURCH STREET NEW HAVEN, CONNECTICUT

THE COURT: United States against Robinson and Savarese.

MR. HARTMERE: We filed a motion for a continu-

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ance, a writ of mandamus, which has been filed with the Second Circuit this morning. We have been attempting to contact

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the Criminal Division -- we have been unable to do so -- to

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determine whether in fact it has been filed, but along with the Government's petition for mandamus is a motion for a stay as to

Joseph Davies, who is the attorney from the Appellate Section of

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this particular case as to final jury selection.

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Again, we have attempted to find out if that has been indeed signed by a Judge of the Second Circuit and we have

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been unable to do so at this point.

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The Government would move to continue the case based on what I have represented as to what is contained within

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the motion.

17	I understand that a copy of the petition for
18	mandamus and the motion for a stay was mailed to the Second
19	Circuit on Friday. It was supposed to be hand carried this
20	morning. Whether in fact both have been done, I am not sure.
21	At least a copy was mailed out Friday at the very least.
22	THE COURT: For a stay of what, of this case?
23	MR. HARTMERE: Yes, Your Honor, a stay of the
24	Court's order, both on this case and on the overall decision of
5	the Court.
- 11	

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Did Your Honor receive a copy of the materials?

THE COURT: That you sent to the Second Circuit?

MR. HARTMERE: Yes, they were sent from Washington.

THE COURT: Yes, I had that this morning. I am not quite clear on the need for it. It says the Government moves for a continuance to avoid the possible delay. How will we avoid delay by delaying?

MR. HARTMERE: In the motion, Your Honor?
THE COURT: Yes.

MR. HARTMERE: Delay should the Government's petition for mandamus be granted and should this motion for a stay be granted, in fact this would be become moot I suppose, this motion for continuance here. It may be moot at the present time. We can't find that out.

I think if we go forward today and pick the 16 final panel and in fact the Second Circuit grants, or at least 17 hears our petition and grants the motion for a stay, then at 18 least as to part of the mandamus, that is as to this particular 19 case, the question is either mooted out or we have a serious double jeopardy problem should the Second Circuit find in our 20 favor or grant the petition, and we will then be in a position 21 22 where we have a final jury impaneled and sworn with the Second 23 Circuit saying, possibly saying it shouldn't have been done 24 that way.

We will then not be in a position to pick a jury

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141 CHURCH STREET NEW HAVEN, CONNECTICUT in accordance with whatever they say because we will have a jury.

THE COURT: Is the Government's view that jeopardy attaches when the jury is impaneled?

MR. HARTMERE: I think that's from the case law, Your Honor, when the jury is impaneled and sworn. Now, I realize in this district we usually view it as when evidence is presented, at least that's been the view in front of certain Judges but I think from the case law it says when the jury is impaneled and sworn jeopardy attaches.

THE COURT: Supposing we impanel them and don't swear them until we are ready to present evidence?

MR. HARTMERE: Well, I think it would be a fruitless exercise to do that at this point. In other words, the reason that they wouldn't be sworn is to avoid any jeopardy problems should the Second Circuit grant the petition whereas there is really no need to do that at this point at any rate, if we are not doing it in view of the forthcoming action of the Second Circuit.

it's not really the array, it's that portion of the final panel
that's available for selection.

MR. HARTMERE: Your Honor, except for possibly

five of those people will be brought in as the jury on this case at any rate so they will all be back again except for the extras that we have.

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THE COURT: Some of them will be back. What's the reason for the delay, from either the date of the ruling, which was October 15th, or the day when reconsideration was denied, which was November 4th?

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MR. HARTMERE: Well, this matter has been handled by the Department, Your Honor, by the Appellate Section of the Criminal Division.

They had the same problem that we have had. They have had statisticians in Washington, we had none here, however, their statisticians were in Washington and we had to transmit the figures and basic statistics down to them. That's been an ongoing procedure.

We anticipated that it would have been done at least a week ago but they ran into further delay down there themselves with their own statisticians and whatever else they ran into. I don't know what problems they had but the petition was not drawn here. It was drawn in Washington and that's the reason for some of the time, at least.

mandamus in the course of a pending criminal case they do it
almost instantaneously. This is I would think a fairly
unusual delay in seeking mandamus of a ruling made in the course
of a pending criminal case.

MR. HARTMERE: The Government, Your Honor, to my
understanding, the U.S. Attorney cannot file a petition for

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THE COURT: I am talking about the Government, not any particular branch of it, the Executive Branch.

MR. DORSEY: Perhaps I could comment on that.

We kept the Appellate Section of the Criminal Division of the

Justice Department apprised of what was going on during, through
the course of October, when other proceedings took place here,

and as the result of the November 4th ruling, when that was

communicated to the Department, it was communicated with a

recommendation from my office that a mandamus petition be sought.

They had to in Washington review all of the documents which were sent down to them. There was apparently within the Department itself a mix-up because, frankly, we had to send about a week later, if I recall correctly, we had to send the documents again because the Appellate Section lawyer, who is responsible for the case, still didn't have it.

As soon as he reviewed the matter a communication 18 on mandamus was immediately approved out of the Criminal 19 Division going through the lawyer who had handled it originally, 20 through the head of the Appellate Section and the Criminal 21 Division Assistant Attorney General himself, if I understand 22 correctly, and it was communicated to the Solicitor General's 23 office. 24 No mandamus is authorized except with the specific 25

permission of the Solicitor General.

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In the Solicitor General's office it was reviewed again apparently at three levels. This is the process they go through down there. As soon as the Solicitor himself authorized a mandamus, then the preparation of the actual petition was commenced in the Appellate Section.

That was done and the research that was involved, both on the question of the propriety of the mandamus as well as the merits of the challenge to the Court's order, required considerable amount of research and additional statistical analysis that was completed, if I understand correctly, on Thursday of this past week, and the final form of the petition was prepared on Friday and mailed out.

We have been pointing out to them the exigencies of the circumstances here, including specifically the trial schedule that Your Honor has been indicating all along.

I might say a concern that we have on the delay issue that Your Honor raised earlier is the question of what will transpire if the Court goes ahead and picks a jury today, actually impanels it.

21 | 22 | 23 | 24 | 25 |

Whether they are actually sworn or not may not be relevant to this question, but if they are actually picked and then either the stay is granted or more importantly if the mandamus is granted, then there is going to be a delay because you will have to probably start the selection process all over again, having picked a jury, and presumably see, though not

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perhaps having sworn it, you may end up in a situation where we have to start all over again.

THE COURT: But I am not saving anything. If they tell me to start all over again, I will have to start all over again but if they don't tell me to start all over again, I would have unnecessarily delayed this trial.

MR. DORSEY: The point is if they tell you to go ahead with the trial you can do so if you have not picked the jury today. In other words, if part of the order, which is basically our concern at the moment, and that is the picking of the jury in the face of the Government having been in effect denied its peremptory challenges, at least three of them that were exercised, if the Court says the case can go forward, the case should go forward, but the case should go forward without the jury having been selected in the manner that the Court order encompasses, then that selection process could go forward at any time, but if the Court goes forward now and picks the jury, then with the peremptory challenges in effect having been invalidated, then the Court has to start all over again, whereas if you don't actually --

THE COURT: So we are going to have -- I think it's nineteen people --

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four and --

MR. DORSEY: I thought it was twenty-one with the

THE COURT: It was and now I think there is one person unavailable from the original group. I think it's nineteen which includes the three disallowed challenges.

(Discussion off the record.)

THE COURT: I want to be sure we are in agreement on what the pertinent numbers of people are at the moment. I think it's clear, but since it may affect the Government's request for continuance, I want to be certain about it.

My understanding is that at the time we started jury selection we had -- and at that time it will be recalled we were anticipating a jury of twelve and five alternates, so we endeavor to have seventeen names in the final panel after all peremptories were used, and we ended up by my count with seventeen plus the four Government challenges that were excepted to.

questioned challenges for a total of seventeen.

I suppose one possibility is, and at this stage we don't really need five alternates, so we don't anticipate the trial delay that we anticipated back in the summer of whenever it was when we started this proceeding, so normally we can pick twelve and two alternates. If we wanted to pick twelve and two alternates from the seventeen, the fourteen names selected might include some or all of the three questioned challenges.

I suppose it's possible that if the Government -if the Court of Appeals issues any stay or wishes to issue any
order affecting the composition of the jury in this case we
could still proceed with the presentation of evidence, if it's
the wish of the Court of Appeals.

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In other words, if the Court of Appeals wants to sustain the Government's exercise of the challenge of those three people, excuse any of those three that are selected and substitute the three other names who would have been picked but for my disallowance of the Government challenges.

MR. DORSEY: That's true. The same basic thing could be accomplished, and this is the purpose of our motion in this particular respect, by just doing nothing today and holding the question of further jury selection proceedings in abeyance until such time as the Circuit Court makes a determination.

The point is that we would thereby preserve this

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particular panel. My concern is that if you pick a panel of twelve and two, and I think almost of necessity the highest possibilities or probabilities are going to be that at least one of the three is going to be in the twelve or the two.

If that happens and you have in any way deemed to have tainted the jury that is selected, I don't see how you can take somebody off and put someone else on.

THE COURT: If that's what the Court of Appeals wants done they will tell me.

MR. DORSEY: What I am suggesting, it's easier not to in effect include in either the twelve or the two any one of the three that were challenged and wait to see what the Court of Appeals does.

14	If the Court of Appeals says there is nothing to
15	be done and you go forward, then you can pick the twelve or the
16	two and no problem has developed. If you have already picked
17	the twelve and the two and if the Court of Appeals says that the
18	setting aside of the Government's peremptory challenges is
19	improper, then you get someone in the twelve of the two that you
20	then have to take out and the question comes down to whether or
21	not that would thereby require us to start all over again,
22	because if you select the twelve and the two, that is your jury.
23	THE COURT: What happens if you say it will be

THE COURT: What happens if you say it will be difficult, I'm not quite so sure who it will difficult for.

But in any event let's suppose we pick a jury and the Court of

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141 CHURCH STREET NEW HAVEN, CONNECTICUT Appeals were to say, "We think the granting of the motion to set aside the challenges was in error but it's too late for us to do anything about it," what is the harm at that point?

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either that ground or on another ground or a number of other grounds I suppose could at this juncture say they are going to do nothing with respect to the order that is entered insofar as it applies to this case and merely deals with the broader aspects of the ongoing requirements of the Government insofar as your order is concerned, in which instance there is no harm if

11	one regards the jury selection as in effect having been properly
12	accomplished and the answer to the question really is whether
13	or not we should speculate at this juncture as to what the
14	Court of Appeals will do since, as I understand it, we are not
15	going to go forward with the actual trial of the case today,
16	and by simply delaying the selection of the twelve and the two
17	until you actually commence the trial itself with the
18	presentation of evidence, there was no harm done to anyone and
19	you preserve the selection of the twelve and the two without
20	having to get involved with the additional three who are the
21	subject of the peremptory challenges.
22	THE COURT: If we do delay we bring back some
23	people unnecessarily.
24	MR. DORSEY: You bring back three people un-
25	necessarily. That's why I called the Court to bring this to the

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Court's attention on Friday .

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THE COURT: I think it was on Wednesday before the Thanksgiving Holiday.

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MR. DORSEY: Right.

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THE COURT: You bring them back unnecessarily, that happens. You also avoid the opportunity to have a jury

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finally picked and ready in the event both counsel who are now,

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at least one defense counsel and the Government counsel are

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engaged in another criminal case, as I understand it, but

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criminal cases have a way of having uncertain futures, and for

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all I know they may become available tomorrow morning.

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MR. DORSEY: That's true.

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THE COURT: I understand they don't expect to be.

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MR. DORSEY: That's my understanding too. The

15	other thing is this, Your Honor. If the Court of Appeals rules
16	favorably on the Government petition insofar as it has appli-
17	cation in this case, then you don't have to bring the three
18	back because if the three are then by virtue of the prior
19	peremptories deemed excused, then you just simply will have to
20	bring back the twelve and the two and that's your jury for all
21	intents and purposes.
22	You go through the formality of pulling them out
23	of the hat
24	THE COURT: What's the harm if ultimately some of
25	the challenged peremptories are seated in the jury and we go to
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position from the time I inquired when the challenges were first questioned by the defense counsel that the Government had nothing to put on the record to indicate any other reason for challenging them, there is no claim that we would be putting into the jury box somebody who, for example, knows the defendant or where there is --

MR. DORSEY: Those would be grounds for cause that we would have brought to the attention of the Court.

to go beyond challenges for cause and indicate whether there was any other reason, frankly, any non-racial reason why they just wanted to challenge somebody peremptorily other than challenges for cause, and at that time there was no response.

15	MR. DORSEY: There are no grounds that the
16	Government has within the traditional concept of cause that the
17	Court could ask or could be asked to excuse those three with the
18	possible exception of the affect upon those three of the
19	attendant publicity that took place after the exercise of the
20	challenges and after the Court's order that was entered, but
21	it's my understanding that the Court has determined that that
22	was not the grounds for taking any further action at this
23	particular juncture.
24	MR. ROWMAN. That assumes none of the other juror

MR. BOWMAN: That assumes none of the other jurors would have been offended who were no black.

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THE COURT: I have not had any motion as to publicity, if that's what this is.

MR. DORSEY: That was something we discussed in the office and I don't know whether Mr. Hartmere has brought that to the Court's attention with the request for the excuse.

MR. HARTMERE: That would probably be done, Your Honor, by the final jury selection.

THE COURT: What would be done?

MR. HARTMERE: We would ask for a voir dire by the Court or counsel as to each member of the jury or the remaining seventeen as to whether they have in fact read about this case or seen it on television or radio and the publicity has been significant.

It was put on the record of the front page of the New Haven Register twice; Hartford twice; lead story on the Channel 3 News; and there are various other publications, so prior to final selection we would ask for a voir dire on that to see if any of the seventeen should now be challenged for

19	cause.
20	Our contemplation that we would not be able to
21	make that without the Court affording or at least inquiring of
22	the jurors as to whether there is any basis in fact for it.
23	THE COURT: For cause based on their reading
24	about a ruling?
25	MR. DORSEY: The ruling obviously, I am frank to
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say, has had connotations in many quarters, as has been communicated to me, as to suggest a posture of the Government, if it occurred to one of these three in particular or others, as Mr.

Bowman quite properly points out could very well involve a bias that might in any particular instance be a basis for excuse for cause.

read something or saw Mr. Bowman on television -- I didn't see him but I understand he was on television, I was told so, but the reporter that asked me to go on television, and I declined, but the point is that there was an indication he was going to be on, so I presume that he was, but the point is that one of the jurors might very well, one of the respective jurors might say, "I have read about this and I think this, that or the other thing of the Government's position insofar as this is concerned and, therefore, I do have a feeling that the Government has manifested an attitude or position that is not acceptable to me,"

18	and in some way express themselves in a way that would result in
19	at least the question being raised about the propriety of an
20	excuse for cause or indeed a request that the Government be
21	permitted to exercise
22	THE COURT: How far does that go? Supposing in
23	the course of a trial I exclude a confession on the grounds

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that the defendant was beaten into giving it and that gains wide

publicity, do I ask the jury do they think less of the Government

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because one of their agents beat a defendant?

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MR. DORSEY: Obviously not because of the fact that the Government would have no grounds to do anything at that particular juncture except enhance its position by a motion for mistrial, jeopardy having attached there would be nothing that the Government could do about it.

This is something that we can do something about because we haven't gotten to the stage that the actual veniremen have been reduced to the actual jury seated in the jury box.

THE COURT: You would make the same argument, supposing the confession were suppressed before jury selection on a motion to suppress?

MR. DORSEY: If there was anything about the case or of the Government's position that resulted in a statement of an attitude by a juror that they had read anything about the case, then I would think certainly it would be grounds for

excuse for cause or at least would justify the exercise of a 19 peremptory if the Court refused to do so. 20 If the jury says, "Oh, yes, I read about the FBI 21 or some other Government agency beats all of its confessions out 22 of people and in consequence I would be adversely influenced if 23 I heard any confession out of any defendant," then I am sure Your 24 Honor would entertain a motion to excuse that juror for cause. 25 MR. WILLIAMS: That's not the kind of question we SANDERS, GALE & RUSSELL Certified Stenotype Reporters 664 PROSPECT AVENUE 141 CHURCH SIREE! HARTFORD, CONNECTICET NEW HAVEN, CONNECTICUL

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are permitted to ask on voir dire. If the Government is suggesting a challenge to the rules --

THE COURT: What is the defendant's view about a motion for a continuance?

MR. DORSEY: I would make one observation in relation to that, Your Honor. Obviously that's not the question that's asked. The question that's asked, "Have you read anything about the case or is there anything about what you have read about anything pertaining to this matter that in any way would influence you," that sort of question would be totally -- Mr. Williams' suggestion contrary is something --

MR. BOWMAN: With respect to the Government's motion for continuance, as this Court knows, the defendant's papers in support of its original motion have been on file since September 1st.

The Court ruled on October 15th and on November 4th denied the Government's motion for reconsideration. So for three

There is a cost factor that the court has often pointed out to defense counsel, and finally if jeopardy doesn't attach because the jury is not sworn today, then how is the

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## Government penalized?

Yet if we have delay after delay after delay there is a possibility, a strong possibility of prejudice to the defendants.

so I see no reason to grant the Government's motion for continuance. I have not been served a copy of their application for mandamus as required by Rule 21 of the Federal Appellate Rules, so I really don't know what the content of those papers are.

Here we sit on the morning of jury selection, it's been three and a half weeks since the Government knew we were going to resume a jury selection and there is just no reason that's been put forth by the Government to delay this proceeding any further.

So we object to a continuance and do so strenuously.

It would seem to me that this case is at least very close to the circumstances in which the Second Circuit has recently ruled it is proper to attach costs against an

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attorney on an individual basis who is responsible for such delay.

MR. DORSEY: I point out, Your Honor, in the papers that I have -- Your Honor has a copy of, a copy of this, of all of the moving papers in the Second Circuit -- was mailed on Friday last.

Your Honor has received his copy, we have received our copies, and I am assuming that the Second Circuit has received its copy. It specifically recites service on Mr. Bowman, on Mr. Williams. The fact that they have not gotten their copies yet in the mail, whether they were in the morning's mail I have no way of knowing. They are en route.

I can't suggest anything more than that. If they want to look at our copies I would be more than happy to make them available.

The Second thing is that insofar as -MR. BOWMAN: I was in my office on Friday, Your

18 Honor, service two and a half blocks away could have been 19 accomplished by hand-delivery. 20 MR. DORSEY: The petition was prepared, as Mr. 21 Hartmere said earlier, in Washington. It was mailed out of 22 Washington Friday. 23 As far as the delay factor is concerned, I think 24 that if the court was prepared this morning and contemplated 25 going forward with the presentation of evidence this morning, SANDERS, GALE & RUSSELL Certified Stenotype Reporters 564 PROSPECT AVENUE 141 CHURCH SIREET HARTFORD, CONNECTICUT

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that would be a different situation. All we are suggesting is that the status quo be maintained until the Second Circuit has an opportunity to review it.

Now, as far as the practicalities are concerned, the Government really is not troubled by whatever Your Honor does except that we point out that if you select a jury and the Second Circuit says that one or two or three of the people that are ultimately included in the selected group should not be in there because they have been the subject of a valid peremptory challenges, then for all intents and purposes you are going to have to start all over again, I think.

That's the only purpose for the motion.

MR. BOWMAN: Your Honor, I think Mr. Dorsey made a representation, or Mr. Hartmere, that the statistical workup was being accomplished in Washington. It escapes me completely of how any additional statistical input would have to come from Washington that could not come from this State of Connecticut

or at the very, very least the Greater New Haven area. 18 It makes no sense to me. One government. Three 19 and a half weeks have passed since the original motion was --20 since the motion for reconsideration has been denied. The 21 Government has had people checking our figures and if we were 22 wrong they had ample opportunity to show it, and there is no 23 basis for this at this hour, at this stage of the proceedings. 24 We strenuously object to any further delay. 25

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MR. DORSEY: I might point out, I think in the addendum to the papers that Your Honor has, there are five or six what were found to be errors in the defendant's figures and those have been flagged to the Court for its consideration as to whether or not it has any significance in relation to the order that was entered.

The statistical work that was done in Washington was only one of several factors that Mr. Hartmere referred to as taking up the time of the people in Washington as they moved forward and processed this matter for the determination of whether a mandamus should be petitioned.

THE COURT: Anything else to be said on this?

Well, I think I am going to deny the Government's motion for a continuance to the extent that it seeks a delay in order to present the issue in the October 15th ruling to the Court of Appeals. I think the motion simply comes too late.

18 weeks since the motion to reconsider was denied. It's a

19 criminal case and while I think the Government is right that

20 there will be very little lost by delaying, it seems to me

21 it's also true there will be very little gained.

22 At the very worst, even if the Court of Appeals

At the very worst, even if the Court of Appeals wishes to find error in all of the rulings made, the worse that will happen is that a jury will be impaneled, which includes three blacks, that the Government preferred to

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challenge without there being any on the record indication of non-racial violence and I don't think that's any harm to anybody.

I note that much of the petition, and apparently

the ostensible reason for the delay, is the further analysis of facts and the claim of what are called five major errors in the defendants' statistics.

I have been trying to determine whether those claims of major errors vary the statistics to any appreciable degree and my first impression of them is that they do not.

There is a reference at Appendix A that apparently has recalculated the black percentage of challenges, leaving out the Hispanic, and it says that using the black figures there were twenty-two peremptories against twenty-two black veniermen for an exclusion rate of what is in the printed document as 8.4 percent.

That obviously is a major error on the part

17	of the Government and simple arithmetic will show it's not
18	3.4 but 81.4.
19	I trust that statistic will not be relied on
20	too strenuously in the Court of Appeals.
21	MR. DORSEY: It sounds like a typographical
22 -	error.
23	THE COURT: It may be but it's certainly a very
24	significant one. In any event if the Government thinks the
25	true figure is 81.4 instead of the 84.8 that I calculated from
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the defendants' evidence, I hardly think that there has been a major error effecting anything.

the figures to see what was being presented is this: if in fact the Government had significant new data to present, and it seems to me that they would have presented it in the District

But more basically the reason I took a look at

Court.

They asked for time to do that. They were given time to do that and they did that. I have no idea whether or not the Court of Appeals will be interested in claims of new facts that have not been presented in the District Court but that's a matter to be resolved in the Court of Appeals.

I am asked to grant a continuance essentially because mandamus is being sought. I frankly don't know of any authority or even any appropriateness for a District Court delaying the course of a criminal trial to facilitate the effort to have the presiding judged mandamus.

18	If there was to be some extraordinary prejudice
19	to the Government I could understand easing the mandamus rule
20	but there is not that here. If the naked legal issue were to
21	be tendered, that clearly could have been tendered weeks ago.
22	If the factual issue is to be reviewed on new
23	evidence, that could have been presented to the District Court.
24	So I simply don't think that it is at all appropriate to delay
25	a criminal case.

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The Court of Appeals reminds us all the time for the need to move criminal business expeditiously. If they wish to intervene in this case I am sure they will be equal to the task of fashioning a remedy that they think is appropriate.

But I think this request comes too late. I think it doesn't take nearly this long to seek mandamus from an interlocutory order in a criminal case.

I appreciate the Government has its case, it's a large Government and the Solicitor General likes to review these but if he was just to reassert the authority to exercise supervisory power over Government appeals, then he has to do it more quickly.

So the motion for continuance is denied.

MR. DORSEY: I would say, Your Honor, that the statistics, giving the Court the differences, the errors, I don't agree with the characterization of them as major. I do not think they substantially change the basic figures on which

18 Your Honor relied. They do somewhat. The purpose, and I insisted they be in the 19 petition, was to give Your Honor, and before the Court this 20 morning, was simply to give Your Honor an opportunity, not to 21 see new or different statistics, but to see the errors that we 22 felt were demonstrated in the figures as presented. It's just 23 simply a courtesy so there would be no claim that we had in any 24 way sought to use figures that were other than what the Court had 25 relied on. SANDERS, GALE & RUSSELL Certified Stenotype Reporters 14) CHURCH SIREET 664 PROSPECT AVENUE NEW HALLY CONSIDER HARTFORD CONNECTICUT

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THE COURT: We will turn shortly to the jury selection but before that final panel is brought in, I want to understand what the Government's position is as to voir dire. We have discussed that and Mr. Hartmere I presume will want some questions asked just simply to find out whether any of the veniremen have read anything about this case or have heard anything about this case, and I presume the next question would be -- particularly with respect to the jury selection process, and how far the Court decides to go down the route particularizing questions from that juncture and whether it's done individually would depend upon the answers that are received.

If nobody has heard anything about the process, then nothing further need be asked. If somebody specifically answers a question in a particular way I would presume that they would be followed up by questions designed to try to ascertain whether any of the veniremen have any adverse

17 attitude insofar as the Government's position is concerned by 18 virtue of anything they have seen or read. Do the defendants have any view on that? 19 20 MR. WILLIAMS: It seems to me if any inquiry at 21 all is to be made it ought to be rather a more standard inquiry 22 of the group. Simply asking whether anything has occurred since 23 they last were questioned regarding this matter which causes any 24 of them to feel that they are not able to give all the parties 25 a completely fair trial. SANDERS, GALE & RUSSELL

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MR. BOWMAN: I have no comment.

THE COURT: Is there anything else concerning that case that needs to be taken up before jury selection?

MR. DORSEY: Not as far as I know unless there is something that develops. We are trying to find out what is

the situation of the matter in the Circuit Court of Appeals and

so far I have been unable to find out.

MR. BOWMAN: It does occur to me if a question is posed to the jury, has the jury read about this case in the papers, I think that there is a possibility of an adverse inference being drawn by the perspective jurors against the defendant that there is some notoriety about the defendants.

thing and since it's been some time since they were last here it's perfectly appropriate to update that inquiry. I won't ask it as if some momentous adverse event happened in the interim but rather an updating of the same inquiry.

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but by an indirect route from Washington since we did not file them. I have been assured they were filed in the sense they were mailed. And obviously they can get to Connecticut but maybe they can't get to New York. I don't know what was done, frankly. The Department —

THE COURT: Again, it seems to me if there was such urgency that the Government felt it would be seriously disadvantaged by proceeding today, this date was set back on October 13th and if it really mattered to the Government, and I don't mean the U.S. Attorney's office, I mean the Government, the papers were available Friday and they could have been delivered Friday.

The Clerk's office was open on Friday and could have received them for filing, so I am still of the view that we ought to proceed.

I take it it is agreeable to the parties that we

17	select only two alternates rather than five although I should
18	hear you on that if there is any preference to maintain the
19	original plan even though the reason for it no longer obtains
20	since we now plan trial a lot sooner than we did at the time.
21	At the time this was the last of many cases and there was some
22	likelihood of a delay before we got to trial.
23	MR. DORSEY: I was going to suggest, and I just

MR. DORSEY: I was going to suggest, and I just asked Mr. Hartmere and he concurs, I would be inclined to such, and it's his case to try and maybe I ought to but out, but if

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you select all five you have only got a potential for five.

that I was concerned with, which was at least in part the basis

for our motion for a continuance, and that is if you have a

jury of twelve, however they are made up so far as the three

Now, that would at least prevent the problem

peremptories are concerned, plus the five, then at least it holds the status quo in the sense that if between now and the time that you actually commence to taking of evidence, if the petition ever gets to New York and some action is taken on it that affects this trial, then you would have open to you the options of in effect putting alternates into the regular panel if it becomes necessary by virtue of any order that the Court might make with respect to the three that were the subject of peremptory challenges.

Do I make myself clear?

Other than that we have no basis for taking any particular position.

twelve jurors and two alternates today and some of the three,
all three or any portion thereof, we will end up with less
than twelve and two alternates when in fact the case is tried.

Again, there is a chance here of a further delay.

That's from the Second Circuit, depending on what their ruling

is. We have no way of knowing right now.

I don't think there is any prejudice to the defendant by doing that if we set a date certain and we have twelve jurors and five alternates perhaps even by agreement, if the Court's original ruling in this case stands, then three of the alternates in the order that they are selected can be told not to report in.

there are particularly weighty considerations on either side of this particular issue. I think the most appropriate thing to do is to proceed with this case in as straightforward a manner as possible and to do whatever would normally be done in the

MR. DORSEY: To ask a rhetorical question, what is your proposal if, let's say Thursday of this week there has

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141 CHURCH SIRFET NEW HAVEN CONNECTICUT been either a no action on mandamus or a denial of the mandamus with respect to the order applicable to the further trial of this case, then, of course, obviously you could go on no matter what you do here today, but supposing as of that time you are prepared to go forward with the trial of this case, you get three within the fourteen of the selected, of the peremptory challenged veniremen, what is your proposal or your contemplation with respect to the jury at that particular point if all of a sudden, in other words, the mandamus petition has been granted or a stay has been granted or something has been done to sustain the Government's position with respect to the exercise of those peremptory challenges?

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THE COURT: Well, when you say if something has been done, I can't anticipate what the something is, but I can reasonably anticipate that the something will include a direction as to what the Court of Appeals wants done. If they simply make an order that leaves it unclear what I should do, then I will have to decide what I should do but I don't think that I should

anticipate them issuing an unclear order.

MR. DORSEY: Whatever the form of their order, supposing it just simply is couched in terms of sustaining the Government's position on the propriety of its exercise of those three peremptory challenges and in effect says those three veniremen are out, they were challenged and whatever orders thereafter, now, because there is nothing further before the

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141 CHURCH STREET NEW HAVEN CONNECTICUT Court except that particular legal question insofar as this trial is concerned.

In effect what I am really asking, can you proceed with this trial under those circumstances, and I think the rhetorical answer to the question is, of course, no, and keeping the five in gives you the opportunity to answer that question yes. That's the only reason I agree there is no weighty issues involved.

The only purpose is to try to preserve for the sake of continuing the proceeding with this particular trial, without getting into what may be an irretrievable position with respect to the jury is concerned.

Even the three people who will not be selected today for the jury or alternates are still people who were properly identified through a valid selection process and it may be they would be available for substitution in the event orders of the Court of

18 Appeals made that the appropriate remedy. 19 MR. HARTMERE: I would also point out, Your 20 Honor, that there is a substantial chance of a delay in that I 21 am on trial before Judge Zampano. That trial will last all this week and probably most of next week and the case agent is 22 the same, so this case could not be transferred -- ordinarily 23 we would have another assistant do it. I don't think we can do 24 25 that.

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Mr. Bowman is going to be on trial after that, so there is further delay problem.

THE COURT: We will have to deal with scheduling matters as they come up.

(Jury present.)

the selection of the jury to try the case of United States against Margaret Robinson and Patricia Savarese. As you will recall we started that jury selection process some time ago.

I guess it was in the summer and we interrupted the processs and we are now ready to complete it. I ought to just call the roll of the jurors that are on the list before me just to be sure. Just acknowledge your presence as your names are called.

THE CLERK: Mr. Biron.

MR. BIRON: Here.

THE CLERK: Mr. Butts.

17	MR. BUTTS: Here.
18	THE CLERK: Mr. Davey.
19	MR. DAVEY: Present.
20	THE CLERK: Mrs. Dixon.
21	MRS. DIXON: Here.
22	THE CLERK: Mrs. Fiander.
23	MRS. FIANDER: Present.
24	THE CLERK: Mr. Fiedler.
25	MR. FIEDLER: Here.

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1	TI	HE CLERK: Mrs. Gabinelli.
2	MI	RS. GABINELLI: Here.
3	TI	ME CLERK: Mrs. Gargiulo.
4	MI	RS. GARGIULO: Here.
5	T	HE CLERK: Mr. Jahn.
6	м	R. JAHN: Here.
7	T	HE CLERK: Mr. Kinsey.
8	MI	R. KINSEY: Here.
9	T	HE CLERK: Mr. Krol.
10	М	R. KROL: Here.
11	T	HE CLERK: Mr. Lubchansky.
12	, MI	R. LUBCHANSKY: Here.
13	T	HE CLERK: Mrs. Pappas.
14	M	RS. PAPPAS: Here.
15	T	HE COURT: Mrs. Nita Pappas.
16	T	HE CLERK: Mrs. Rando.

17	MRS. RANDO: Here.
18	THE CLERK: Mr. Sullivan.
19	MR. SULLIVAN: Here.
20	THE CLERK: Mr. Tolman.
21	MR. TOLMAN: Here.
22	THE CLERK: Mr. Wiltsey.
23	MR. WILTSEY: Here.
24	THE COURT: Anyone present whose names have not
25	been called? All right. We agree on that.

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When you were first here for jury selection I asked you some questions to find out if there was any reason why you ought not to serve on this case. I don't propose to go through that again in length since counsel are the same and defendants are the same, et cetera.

I did ask you, as I do in every criminal case, at that time whether you read anything about the case and since it's now been some time since you were here before, I will ask that same question again, update it. Has anyone read anything about this particular case? All right.

I will just ask you in general the same question

I asked you at that time, just to update the inquiry. Does any

member of this panel know of any reason why you ought not to

serve as a juror in this case or why you would not be a fair and

impartial juror if selected as a member of the jury panel in

this particular case, fair to the Government and fair to the

17 defendants? All right. 18 I will ask the Clerk to draw from the names 19 available for jury selection fourteen names. The first twelve will be the jury of twelve and the next two the alternates in 20 21 the order selected. 22 The Clerk advises me that in calling the names 23 he will be using the veniremen number as it appeared on the 24 original sheet and not today's sheet.

THE CLERK: As your name is called please step

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141 CHURCH STREET NEW HAVEN CONNECTICUT forward to the jury box. Fifty-eight Richard Wiltsey; fifty-six

Frederick Tolman; forty-seven Nita Pappas; thirty William Jahn;

twleve Mrs. Lillian Dixon; thirty-three William Kinsey; sixteen

Mary Fiander; twenty-two Susan Gargiulo; number eleven Ira

Davey; number thirty-eight Harold Lubchansky; number thirty-five

Theodore Krol; number seventeen Andrew Fiedler; number twenty-one

Mrs. Leonore Gabinelli; number forty-nine Mrs. Ruth Rando.

THE COURT: Other than that, is the jury as

THE COURT: Other than that, is the jury as selected acceptable to the Government other than matters made on the record?

MR. HARTMERE: Yes.

MR. BOWMAN: Yes.

MR. WILLIAMS: Yes.

(The jury was sworn.)

THE COURT: You have now been selected and sworn

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16	as the jury in United States against Robinson and Savarese. We
17	won't start the evidence today. As a matter of fact I am not
18	able to tell you today the starting date. It is possible it
19	could be towards the end of this week but I think more realistic-
20	ally next week.
21	We have two alternates impaneled so if a particular
22	starting date does create some very unexpected personal problem

We have two alternates impaneled so if a particular starting date does create some very unexpected personal problem we would be able to use an alternate. I hope we will be able to proceed with the entire group of twelve plus two alternates so we will be sure of having twelve at the conclusion of the case, but

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as far as scheduling I will simply leave it that the Clerk's office will notify you and give you as much notice as possible when we know the exact starting date.

Between now and then let me caution you, as I do
in every case, please don't endeavor to find out anything about
this particular case or permit anyone to discuss it with you.

Just wait until you come back to court, hear the evidence as it
is presented in the court room and confine your decisions solely
to that.

All right. This jury has been excused until summoned by the Clerk when you will get notice of that.

A JUROR: You usually state your approximate length --

THE COURT: Three or four days a fair estimate?

MR. WILLIAMS: At the most.

MR. HARTMERE: Yes.

17	THE COURT: I don't think there is any likelihoo
18	of an extended trial. I think three or four days is quite a
19	realistic estimate.
20	All right. Thank you very much.
21	(The jury was excused.)
22	, and just chouses,
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